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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SADAJI TSUGE

Appeal 2010-001094
Application 09/788,339
Technology Center 1700

Before BRADLEY R. GARRIS, ADRIENE LEPIANE HANLON, and
MARK NAGUMO, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

Appellant appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 16, 18-20, and 22-24. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

Appellant claims a solar cell module comprising a solar cell element 3, an incident light transmitting member 1 made of glass which is adhered by resin 4, and a transparent resin film rear surface member 2 adhered by resin 4, wherein the solar cell element comprises a semiconductor junction 31-32, the resin for adhering the incident light transmitting member contains a sodium ion depositing from the incident light transmitting member, and the solar cell element comprises a one conductive type crystalline semiconductor substrate 31 between the semiconductor junction and the resin containing the sodium ion so as to shield a diffusion of sodium ion to the semiconductor junction (claim 16; Fig. 1).

Representative claim 16 reads as follows:

16. A solar cell module comprising:

a solar cell element;

an incident light transmitting member made of a glass adhered at a light incidence side of the solar cell element by a resin; and

a rear surface member comprising a transparent resin film adhered at a rear surface side of the solar cell element by a resin, wherein

the solar cell element comprises a semiconductor junction so as to form an electric field and is sealed with each of the resin adhering the light incidence side light transmitting member and the rear surface member,

the resin for adhering the incident light transmitting member at the light incidence side of the solar cell element contains a sodium ion depositing from the incident light transmitting member, and

the solar cell element comprises a one conductive type crystalline semiconductor substrate between the semiconductor junction and the resin containing the sodium ion so as to shield a diffusion of sodium ion to the semiconductor junction; and

an anti-reflection layer between the one conductive type semiconductor substrate and the resin containing the sodium ion, said anti-reflection layer comprising a silicon dioxide layer.

The following references are relied upon by the Examiner as evidence of obviousness:

Brandhorst, Jr.	4,131,486	Dec. 26, 1978
Mitsui et al.	4,649,088	Mar. 10, 1987
Spitzer	4,667,060	May 19, 1987
Sakata et al.	JP 11307791 (as translated)	Nov. 5, 1999
Yamagishi et al.	6,300,556 B1	Oct. 9, 2001
Mimura et al.	6,307,144 B1	Oct. 23, 2001

Under 35 U.S.C. § 103(a), the Examiner rejects:

claims 16, 18-20, 23, and 24 as unpatentable over JP 791 in view of Yamagishi, Brandhorst, Spitzer, and Mitsui, with supporting evidence provided by the Specification;

claims 16, 18-20, and 22 as unpatentable over Brandhorst in view of Mimura and Mitsui, with supporting evidence provided by the Specification; and

claims 16, 18-20, and 22 as unpatentable over Mimura in view of Brandhorst and Mitsui, with supporting evidence provided by the Specification.

We sustain each of these rejections based on the findings of fact, conclusions of law, and rebuttals to argument which are well expressed by the Examiner in the Answer. The following comments are added for emphasis and clarification.

Because Appellant does not separately argue the dependent claims, we focus on sole independent claim 16 in our disposition of this appeal.

The references applied in the rejections evidence that each of the structural elements and arrangements required by claim 16 were individually known in the prior art at the time of Appellant's invention. Further, the Answer contains detailed and convincing rationale in support of the Examiner's conclusion that it would have been obvious for one with ordinary skill in this art to combine and arrange these prior art elements in the manner claimed by Appellant. Finally, the Examiner has provided a sound basis in fact and technical reasoning for finding that the solar cell module suggested by the prior art of each rejection inherently would contain sodium ion in the resin whose diffusion to the semiconductor junction would be shielded by a conductive type crystalline semiconductor substrate as required by claim 16.

In this latter regard, we (like the Examiner) understand that the applied references contain no teaching of the shielding function recited in claim 16. However, the recognition of another advantage flowing naturally from following the suggestion of the prior art cannot be the basis for patentability when the difference between the claimed invention and the prior art would otherwise be obvious. *See Ex parte Obiaya*, 227 USPQ 58, 60 (BPAI 1985), *aff'd. mem.*, 795 F.2d 1017 (Fed. Cir. 1986).

As correctly indicated in the Answer, Appellant's arguments in the Appeal Brief against the rejection based on JP 791 as the primary reference amount to general assertions that the rejection is improper without any specific explanation of why the Examiner's obviousness rationale is considered to be erroneous (Ans. 16-19). The Examiner also correctly points out that Appellant in the Appeal Brief merely reiterates the JP 791 arguments against the rejections based on Brandhorst and Mimura as the primary references and that such arguments are irrelevant to these rejections (*id.* at 19-20). In addition, we observe that Appellant fails to recognize and/or address the fact that the Examiner's rejections include an inherency finding and that the Examiner refers to the Specification disclosure, not as prior art, but as support for this inherency finding.

For these reasons, the Appeal Brief fails to reveal any error in any of the Examiner's findings including the finding of inherency or any of the Examiner's conclusions of law.

In the Reply Brief, Appellant presents for the first time arguments which specifically dispute the Examiner's obviousness rationales for each of the rejections on appeal. Appellant has not explained why these new arguments were not presented in the Appeal Brief. Under regulations governing appeals to the Board, any new argument not timely presented in the Appeal Brief will not be considered when filed in a Reply Brief, absent a showing of good cause explaining why the argument could not have been presented in the Appeal Brief. *See Ex parte Borden*, No. 2008-004312, 93 USPQ2d 1473, 1474-77 (BPAI 2010) (informative). Appellant has provided this record with no such showing. Accordingly, we will not consider the new arguments in the Reply Brief.

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Application 09/788,339

The decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1).

AFFIRMED

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